

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.772 of 2018

In connection with Special Case No. 01/2012 arising Out of P.S. Case No. - 75 Year- 2011 Thana –
Bodh Gaya District- GAYA

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1. Gyanti Kumari, Wife of Shyam Narayan Singh,
2. Shyam Narayan Singh, Son of Late Sakaldeo Singh,
Both residents of Village- Korara, P.S.- Paliganj, District- Patna at present residing
at A.P. Colony, Gaya, P.S.- Rampur, District- Gaya.

.... Petitioners

Versus

1. The State of Bihar, through the Principal Secretary, Department of Law,
Government of Bihar, Patna.
2. The Special Court No II (Vigilance) Patna, through the authorized Officer.
3. The Superintendent of Police, Vigilance, Patna, Bihar.
4. The Senior Deputy Superintendent of Police, Vigilance Investigation Bureau,
Patna.

.... Respondents

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Appearance:

For the Petitioner/s : Mr. Sanjeev Kumar, Advocate.

For the Respondent-State: Mr. Md. Raisul Haque, SC 10.

For the Vigilance: Mr. Rama Kant Sharma, Sr. Advocate with
Mr. Rakesh Kumar Sharma and
Mr. Santosh Kumar Pandey, Advocates.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 26-07-2018

Heard learned counsel for the petitioners and learned
Senior Counsel representing the Vigilance Investigation Bureau.

2. This Writ Application has been preferred seeking a
direction to the respondent authorities to release the articles which
were admittedly subject matter of seizure in connection with the case
in question but have not been confiscated finally as claimed by the
learned counsel representing the petitioners.



3. It is the contention of the learned counsel representing the petitioners that even though the prosecution had submitted the report to the authorized officer dealing with the confiscation matter that the articles seized are liable to be confiscated but in final analysis the learned authorized officer dealing with the confiscation case has not confiscated certain articles, therefore, this Court would direct release of those articles in favour of the petitioners. Referring the impugned order passed by the learned authorized officer-cum-Special Court II (Vigilance), Patna on 20.06.2014 learned counsel submits that the operative part of the order would make it clear as to what are the items which have been confiscated. So far as the present Writ Application is concerned, learned counsel submits that he is seeking release of only those articles which have not been confiscated.

4. The Court has been informed that the order dated 20.06.2014 passed by the authorized officer-cum-Special Court II (Vigilance), Patna is subject to the appeal preferred before this Court which is pending consideration.

5. Mr. Rama Kant Sharma, learned Senior Counsel assisted by Mr. Rakesh Kumar Sharma and Mr. Santosh Kumar Pandey, learned Advocates representing the Vigilance Investigation Bureau would submit that in fact the petitioners should have filed an application for such release only before the authorized officer dealing



with the confiscation matter but no such application has been filed by the petitioners before the authorized officer dealing with the confiscation matter and the petitioners have directly moved this Court seeking release of the articles which, according to the petitioners, have not been confiscated. It is further submitted that so far as order dated 20.06.2014 is concerned it nowhere says that the articles of which the petitioners are seeking release from this Court have been held to be a lawful acquisition of the petitioners. It is submitted that on perusal of the order dated 20.06.2014 it would appear that the learned authorized officer has nowhere held that those articles are not being confiscated because those have been found to have been acquired by known source of income. The submission is that the petitioners have assumed upon themselves certain facts and based on those assumptions only the release has been prayed in the present Writ Application.

6. At this stage, this Court called upon learned counsel representing the petitioners to demonstrate from the order dated 20.06.2014 passed by the authorized officer-cum-Special Court II (Vigilance), Patna to show as to whether the authorized officer has anywhere recorded a finding as to the nature of acquisitions of the articles which were admittedly seized but have not been confiscated as is being claimed by the petitioners. Learned counsel for the petitioners having gone through the order dated 20.06.2014, for the present, is



unable to demonstrate any such finding in the order.

7. This being the position, in the opinion of the Court, in absence of any adjudication to that effect on the record it would not be just and proper for a constitutional court sitting in its writ jurisdiction to assume a jurisdiction upon itself which is otherwise vested in a regular court constituted under a statute. This Court has already taken note of the submission of the learned Senior Counsel representing the Vigilance Investigation Bureau where he states that prior to filing of the present Writ Application the petitioners have not approached the authorized officer-cum-Special Court II (Vigilance), Patna which is in seisin of the confiscation matter for such release.

8. Keeping it open for the petitioners to seek his remedy in accordance with law before the appropriate court this Court declines to exercise its extra-ordinary writ jurisdiction in the facts and circumstances of the case.

9. The Writ Application is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	26.07.2018
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